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Guidance Regarding Construction Activities

The Maine Department of Environmental Protection (the Department) has developed this guidance document to describe the level of construction activities allowed prior to obtaining an air emission license or license amendment.

Definitions

The following key terms of this guidance are defined pursuant to *Definitions Regulation*, 06-096 C.M.R. ch. 100.

Begin actual construction. "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.

Commence. "Commence," as applied to the construction of a major source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits required by state or federal air quality control laws and regulations and has either:

- A. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
- B. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

All Sources

In accordance with *Major and Minor Source Air Emission License Regulation*, 06-096 C.M.R. ch. 115, Sections 1(B) and 4, a facility must obtain a new or modified air emission license prior to beginning actual construction of the new source or modification. The term "begin actual construction" is defined above. The Department's definition is identical to the federal definition of this term contained in 40 C.F.R. § 52.21(b)(11).

Previous guidance documents^{1,2,3} issued by the Environmental Protection Agency (EPA) clarify that allowed preconstruction activities include planning, site clearing and grading, ordering of materials, and temporary storage on site. Any of these activities may be undertaken at the facility's own risk. Prohibited preconstruction activities include any construction that is costly, significantly alters the site, and/or is permanent in nature. This would include, but is not limited to, excavating, blasting, removing rock/soil, and installing footings, foundations, permanent storage structures, pipe, and retaining walls. The prohibited construction activities include any part of the site or project that

¹ <https://www.epa.gov/sites/default/files/2015-07/documents/19951213.pdf>

² <https://www.epa.gov/sites/default/files/2015-07/documents/begin.pdf>

³ <https://www.epa.gov/sites/default/files/2015-07/documents/cnstrctn.pdf>



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includes an emission unit or any construction activity that is an integral part an emission unit or modification. In other words, if the construction would not serve its original intent if not for the inclusion of the emission unit, such construction is prohibited.

New Major Sources and Major Modifications

The Department’s licensing procedures for new major sources and major modifications must align with federal permitting requirements. Prevention of significant deterioration of air quality regulation 40 C.F.R. § 52.21(r)(1) states [emphasis added]:

Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this section or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this section who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

Facilities must obtain an air emission license for any new major source or major modification prior to commencing construction which has a different definition from “begin actual construction.” As defined above, “commence” as applied to the construction of a major source or major modification includes entering into certain binding agreements or contractual obligations. Therefore, facilities should exercise additional caution when planning projects that may be considered a major new source or major modification, since the prohibition on commencing construction is more stringent and far-reaching than that for minor sources or minor modifications. For example, a new minor source may purchase materials and store them on site prior to license issuance, but a new major source could not do the same unless the materials could be returned without substantial loss to the facility.

Additional Resources

EPA website with guidance documents on Begin Actual Construction:
<https://www.epa.gov/nsr/begin-actual-construction-0>

EPA website with guidance documents on Commencing Construction:
<https://www.epa.gov/nsr/commence-construction>

A copy of this document is available electronically at the following Maine DEP website:
<http://www.maine.gov/dep/air/publications/index.html>

For more information or assistance, please contact a Maine DEP Air Licensing staff member or email us at DEP-Air-Licensing-Help@maine.gov.